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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re P.C. et al., Persons Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

G.C.,

Defendant and Appellant.

F069962

(Super. Ct. Nos. 14CEJ300143-1,  
14CEJ300143-2, 14CEJ300143-3,  
14CEJ300143-4)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Fresno County. Timothy A. Kams,  
Judge.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Daniel C. Cederborg, County Counsel, and Amy K. Cobb, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Franson, J. and Peña, J.

Appellant G.C. is the father of 15-year-old P.C., 13-year-old Alexis and 11-year-old Evelyn, the subjects of this appeal. At a contested dispositional hearing in August 2014, the juvenile court denied G.C. (father) reunification services as to all three minors under Welfare and Institutions Code section 361.5, subdivision (b)(6)<sup>1</sup> after sustaining allegations that father sexually abused P.C. (§ 300, subd. (d).) Father challenges the sufficiency of the evidence to support the denial of services order. We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

Father and his wife (mother) are the parents of A.C., Alexis and Evelyn. Mother also has a daughter, P.C. Father is P.C.'s presumed but not biological father. A.C., though initially involved in these dependency proceedings, was not adjudged a dependent and is not a party to this appeal.

In April 2014, then 14-year-old P.C. disclosed to her school counselor that father had been sexually abusing her since she was 10 years old. Initially, father abused her by fondling her breasts under her clothes but progressed to digitally penetrating her vagina and anus and ultimately sodomizing her. She said father "fingered" her nearly every day. She did not remember if his penis was erect during the sodomy. P.C. said the abuse occurred in her bedroom in the morning after her mother went to work. Father held her down so she could not move. She had never told her mother or siblings about the abuse. She did not tell her mother because her mother had high blood pressure and anxiety and she was afraid it would make her mother sick. The only person she told was her boyfriend, who encouraged her to talk to the school counselor.

Emergency response social worker Julie Donnelly responded to the school and took P.C. and her siblings into protective custody and interviewed them at her office. A.C. told Donnelly that she had her own bedroom, Alexis had his own bedroom and that

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

P.C. and Evelyn shared a bedroom. Her mother worked in the fields and would leave home for work around 5:00 a.m. Father owned his own business and took the children to school. She said she had never seen her father in P.C.'s room but that "anything could happen." She said P.C. had anger problems and often rebelled against and argued with her parents. Alexis said he had never seen his father in P.C.'s room but P.C. was not known for lying. Evelyn said she never woke up and found father in bed with P.C. unless he was telling them goodnight.

P.C. told Donnelly that father last molested her two days earlier by sticking his finger in her vagina and anus. She said she had never had sexual intercourse with him or vaginal or anal sex with her boyfriend. She and Evelyn slept together in a double bed that was pushed up against a wall. Evelyn slept on the side by the wall and she slept on the other side. Evelyn had woken up a couple of times when father was molesting P.C. but she told Evelyn to roll over and go back to sleep. P.C. said she felt compelled to report the abuse when she saw father watching Evelyn go to the bathroom and look at Evelyn the same way he looked at her.

Donnelly contacted mother by telephone and told her the children were in protective custody because P.C. disclosed that father had been sexually molesting her. Mother became angry and wanted to know why she had not been allowed to pick the children up. She said she did not know father was molesting P.C. and would choose her children over him. Donnelly said she would meet with her that evening to explain everything.

Later that evening, Donnelly went to the family residence to speak to mother. Father was also there. Mother said she asked father if he molested P.C. and he said he had not. Mother said she wanted P.C. to have a sexual assault examination to see if she was telling the truth. Father and mother did not think that P.C. had a boyfriend and had not had sex as far as they knew. However, about a month earlier, P.C. asked them what

they would do if she were pregnant. P.C. denied being pregnant and said she was joking after mother inquired.

Donnelly asked father if he ever touched P.C. inappropriately. He said, “Not that I can remember.” When asked to clarify, he said he applied cream to her legs because she had “zits” on them. He said he applied the cream from P.C.’s upper thigh near her groin to her ankles. Father said he applied the cream because P.C. refused to do it. Mother said she did not apply it because P.C. was resistant and mother was too tired at night to force her. They said it was not a prescription cream and they could not remember the name of it. Father denied touching any of his daughters’ private parts underneath their clothes and denied having anal or vaginal sex with P.C. Father suggested that P.C. might have invented the allegations against him because he had recently disciplined her by taking away her tablet computer. He asked that P.C. be examined and willingly gave the police a saliva swab for DNA testing. He was arrested later that evening on multiple charges related to P.C.’s allegations.

Several days later, P.C. participated in a forensic interview and was examined for sexual assault. Transcripts of the interview and the results of the examination were not provided to the juvenile court.

The Fresno County Department of Social Services (department) filed a dependency petition alleging in part that father sexually abused P.C. and placed her siblings at substantial risk of being sexually abused. (§ 300, subd. (d).) The juvenile court ordered all four children detained pursuant to the petition and returned them to mother’s care.

In June 2014, P.C. was evaluated by a therapist who concluded she needed mental health treatment. The therapist reported that P.C. exhibited symptoms of depression, sadness, worry, flat affect, anger, irritability and defiance. P.C. told the therapist she had isolated herself from her family and father since she was 10 years old. She also reported

difficulty falling asleep and staying asleep almost daily, loss of appetite, history of poor hygiene and a decline in academic performance.

In August 2014, the juvenile court conducted a contested hearing on jurisdiction and disposition. Father appeared in custody and mother, A.C. and P.C. were present in the courtroom. In its report for the hearing, the department recommended the juvenile court adjudge the children its dependents under section 300, subdivision (d), order mother to participate in family maintenance services and deny father reunification services under section 361.5, subdivision (b)(6).

Very little evidence was adduced through testimony that was not already admitted through the department's reports. Social workers Julie Donnelly and Maria Cazares testified that P.C. was "tearful" when talking about the sexual abuse. Cazares also testified that P.C. said father told her not to tell anyone about the abuse because the family would not be able to financially survive without him.

At the outset of argument, the juvenile court inquired of county counsel whether there was evidence of sexual abuse other than P.C.'s allegations. County counsel stated there was not. Argument thereafter focused on the department's burden of proving sexual abuse for purposes of a jurisdictional finding and a denial of reunification services.

At the conclusion of the hearing, the juvenile court sustained the section 300, subdivision (d) allegation as to P.C., Alexis and Evelyn and struck the allegation as to A.C. because she was 18 years old. The court also ordered the mother to participate in family maintenance services and denied father reunification services under section 361.5, subdivision (b)(6).

This appeal ensued.

## **DISCUSSION**

Section 361.5, subdivision (b)(6) (the statute) allows the juvenile court to deny a parent reunification services if the court finds by clear and convincing evidence that the

child was adjudged a dependent under section 300 as a result of severe sexual abuse as defined in the statute.<sup>2</sup>

On an appeal from the juvenile court's order denying reunification services, we apply the substantial evidence test. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) In so doing, we view the evidence in a light most favorable to the juvenile court. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If there is any substantial evidence to support the juvenile court's decision, we must affirm it. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

Father contends there was insufficient evidence that he sexually abused P.C. and he further argues that the juvenile court recognized that fact. He states, "[T]he court recognized that P.C.'s allegations could not be reconciled with Evelyn's report that she had never seen father sexually abuse P.C." As support, he cites the following statement made by the court: "[I]t is somewhat odd that [when] two young girls [are] sleeping in the same bed, the other one would not have ever noticed anything untoward happening." By this statement, father further argues, "The record ... affirmatively demonstrates that the evidence of sexual abuse available to the court did not 'command the unhesitating assent of every reasonable mind'-it was not clear and convincing."

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<sup>2</sup> Section 361.5, subdivision (b)(6) provides as relevant to this case:

"Reunification services need not be provided to a parent ... when the court finds, by clear and convincing evidence ... [¶] [t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse ... to the child, a sibling, or a half sibling by a parent ... and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent .... [¶] A finding of severe sexual abuse, for purposes of this subdivision, may be based on, but is not limited to, ... stimulation involving ... anal-genital ... contact ... between the parent ... and the child ... ; or the penetration or manipulation of the child's ... genital organs or rectum by any animate ... object for the sexual gratification of the parent ...."

We have reviewed the reporter's transcript of the juvenile court's statement and father has taken it out of context. The juvenile court made the statement father cites in explaining its reasoning for denying him reunification services. When read in its entirety, it is clear the juvenile court found clear and convincing evidence father severely sexually abused P.C. The court stated:

“[P.C.'s] demeanor is consistent with the allegations. Her statements are consistent over time. The reasons given by [P.C.] in not reporting immediately [appear to be reasonable]. The mother has indicated that her daughter [P.C.] would not lie about this. The factual context is consistent, corroborated by mother who said she would leave for work early in the morning. The daughter saying that dad would come in after that and commit these various acts. All convince this Court that it is highly probable that the facts are true. I do note that the father also has been consistent in his denial, and that *it is somewhat odd that two young girls sleeping in the same bed*, the other one would not have ever noticed anything untoward happening. If this was a criminal case, I think certainly that would present some problems for the trier of fact. This is not a criminal case. And the burden of proof is not beyond a reasonable doubt. It's clear and convincing evidence. I'm satisfied that that burden has been established.” (Italics added.)

Thus, father's contention that the record “affirmatively demonstrates” there was insufficient evidence to support the juvenile court's order denying him reunification services is meritless. Further, we conclude the juvenile court's reasoning for denying father reunification services is substantial evidence to support its order.

#### **DISPOSITION**

The judgment is affirmed.